STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF STATE,	**)**
COUNTY AND MUNICIPAL EMPLOYEES,	**)**
COUNCIL 81, LOCAL 1007,	**)**
Charging Party,	**)**
	)
v.	**)**
	)
DELAWARE STATE UNIVERSITY,	**)**
Respondent.	**)**
*** ***	**ULP No. 01-06-320**
DELAWARE STATE UNIVERSITY,	**)**
Counter-Charging Party,	**)**
	)
v.	**)**
	)
AMERICAN FEDERATION OF STATE,	**)**
COUNTY AND MUNICIPAL EMPLOYEES,	**)**
COUNCIL 81, LOCAL 1007	**)**
Counter-Respondent	**)**

PROBABLE CAUSE DETERMINATION

The Delaware State University ("University" or "DSU") is a public employer within the meaning of Section 1302(n) of the Public Employment Relations Act, 19 Del.C. Ch. 13 (1994) ("PERA" or "Act"). The American Federation of State, County and Municipal Workers, Council 81, Local 1007 ("AFSCME") is an employee organization within the meaning of Section 1302(h) of the Act and the exclusive bargaining representative of certain employees, as defined in Department of Labor Case No. 116, of DSU within the meaning of Section 13023(j), of the Act.

The unfair labor practice charge filed on June 19, 2001, alleges, inter alia, that on or about May 21, 2001, and May 23, 2001, respectively, the University, without prior notice, consultation or negotiation with AFSCME, informed bargaining unit employees holding the positions of Night Desk Staff and Assistant Resident Managers that the period of their employment was being reduced from twelve (12) months to ten (10) months a year with a corresponding reduction in compensation. AFSCME further alleges that DSU further directed the affected bargaining unit employees to direct all questions to the DSU staff.

AFSME contends that by its conduct DSU violated Section 1302(a)(1), (a)(2), (a)(3) and (a)(5), of the Act.

The University's Answer filed on July 5, 2001, denies the material allegations set forth in the Charge and, under a section entitled, "New Matter", alleges the following:

1. The PERB lacks jurisdiction over the subject matter of the unfair labor practice charge because the resolution of the matter requires the interpretation of the collective bargaining agreement in effect between the parties.

2. Despite Charging Party's allegations, prior discussions occurred between DSU and AFSCME, during which the representatives of AFSME did not dispute DSU's authority to implement the intended changes.

On July 5, 2001, DSU also filed a Counter-Charge alleging that the initial charge was filed by AFSCME without reasonable justification or foundation in violation of Section 1302(b)(2), of the Act.

In its Response to New Matter filed on July 16, 2001, AFSCME denies that the issue(s) presented require the interpretation and/or application of the collective bargaining agreement. Rather, the Charge raises issues involving the alleged violation of Sections 1302(a)(1), (a)(2), (a)(3) and (a)(5), of the Act.

AFSCME acknowledges only that a meeting took place involving representatives of DSU and AFSCME at which time AFSCME was informed of the proposed changes.

Also on July 16, AFSCME filed its Answer denying the material allegations set forth in the Counter-Charge.

APPLICABLE STATUTORY PROVISIONS

19 Del.C. §1307, Unfair labor practices, provides, in relevant part:

> (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
>
> > (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
> >
> > (2) Dominate, interfere with or assist in the formation, existence, or administration of any labor organization.
> >
> > (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
> >
> > (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.
>
> (b) It is an unfair labor practice for a public employee or for an employee organization or its designated representative to do any of the following:
>
> > (2) Refuse to bargain collectively in good faith

with the public employer or its designated representative if the employee organization is an exclusive representative.

ISSUE

1. Whether the conduct alleged in the Charge constitutes probable cause to believe that an unfair labor practice may have occurred?

2. Whether the conduct alleged in the Counter-Charge constitutes probable cause to believe that an unfair labor practice may have occurred?

DISCUSSION

PERB Rule 5, Unfair Labor Practice Proceedings, provides, in relevant part:

> 5.6 Decision or Probable Cause Determination
>
> (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with the provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or the submission of briefs.

The pleadings provide no basis for deferring this matter to the parties' contractual grievance and arbitration procedure. A condition for applying the PERB's discretionary deferral policy is that the resolution of the contractual dispute will also resolve the substantive issue raised in the underlying unfair labor practice charge. Red Clay Ed. Ass'n. v. Bd. of Ed., Del. PERB, ULP 90-08-052A, I PERB 607 (1991). The instant unfair labor practice charge raises an issue concerning the reduction in both pay and

hours of work of the Assistant Resident Managers and the Night Shift Staff resulting from a reduced work schedule from 12-months to 10-months annually.

Hours of work and salaries each constitutes a "term and condition of employment" (19 Del.C. §1302(q)) and is, therefore, a mandatory subject of bargaining. (19 Del.C. §1302(e)).

DSU cites no contractual provision controlling these two (2) statutory issues. To the contrary, paragraph 4, of DSU's Answer provides, in relevant part: "Whether specific bargaining unit positions are 10-month or 12-month positions, however, is not addressed in the collective bargaining agreement."

DETERMINATION

Consistent with the foregoing discussion, Respondent's request to have this matter deferred to the contractual grievance and arbitration procedure is denied.

Considered in a light most favorable to the Charging Party and the Counter-Charging Party, the factual issues raised by the pleadings constitute probable cause to believe that an unfair labor practice may have occurred.

A hearing will be scheduled forthwith for the purpose of establishing a factual record upon which a decision can be rendered.

August 14, 2001
(Date)

/s/Charles D. Long, Jr.
Charles D. Long, Jr.
Executive Director